2420.

SUPREME COURT OF THE UNITED STATES.

No. 79.

JAMES C. CONVERSE, ADM'R OF PHILIP GREELEY, JR., DEC'D, PLFF. IN ER.,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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UNITED STATES OF AMERICA,
Massachusetts District, ss:

October Term, 1857.

At a circuit court of the United States for the first circuit and district of Massachusetts, begun and holden at Boston, within and for said district, on Thursday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, before the honorable Peleg Sprague, district judge—

THE UNITED STATES OF AMERICA, plaintiffs,
versus
JAMES C. CONVERSE, of Boston, in said district, as he is administrator of the goods and estate which were of Philip Greely, jr., late of Boston, in the county of Suffolk and district aforesaid, deceased, and late collector of customs, at said Boston, defendant.

The declaration in this case, as amended by leave of court, and with the consent of the parties, is in the words and figures following, to wit:

In a plea of the case for that whereas the said Philip Greely, jr., collector as aforesaid, in his lifetime, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and fifty-three, at Boston aforesaid, was indebted to the plaintiffs in the sum of thirty-nine thousand and ninety-eight dollars and sixty-six cents, with interest due thereon for goods sold and delivered to him, the said Greely, by the plaintiffs; and in the same amount for money received by the said Greely to the use of the plaintiffs; and in the same amount for money paid by the plaintiffs for the use of said Greely at his request; and in the same amount for money due from the said Greely and the defendant, as his administrator, for interest of money before then due and owing from the said Greely in his lifetime to the plaintiffs, and by the plaintiffs forborne to the said Greeley at his request, for a long time before then elapsed; and in the further sum of thirty-nine thousand and ninety-eight dollars and sixty-six cents, with interest thereon according to the account herewith filed and annexed,—in consideration thereof promised to pay the same amount to the United Jtates on demand; yet the said Philip Greely, jr., in his lifetime, and the said James C. Converse, administrator as aforesaid, since the death of said Greely, have not nor hath either of them as yet paid the said sum, or any part thereof, although often requested to do so; but the said Greeley in his lifetime, and the said Converse ever since, have refused so to do, to

the damage of the said plaintiffs, as they say, the sum of forty thousand dollars.

Plaintiffs' claim for moneys due the U. States by Philip Greely, jr., late collector of customs at Boston.

I.	Balance of his acc'ts as collector.....			$26,357 33
II.	" as superintendent of lights.....			4,359 17
III.	Disbursement under special acts of moneys received and not accounted for, viz:			
	To erect two iron spindles.....	$2,000 00		
	" beacon at Black Rock	62 42		
	To beacon and buoys in Essex river...	200 00		
	" at Bird's island.....	112 40		
	To light-house at Cape Fear.....	41 00		
				2,415 82
IV.	To balance as superintendent of marine hospital.....			16 94
V.	To balance claimed for receipts for storage.....			5,949 40
				$39,098 66

With interest to be added from time of demand, or as may be directed by the court.

This action was entered at the October term, A. D. 1855, of this court, when and where the parties appeared by their respective attorneys; and thence the same was continued to the May term, A. D. 1856; and now the defendant, by C. T. and T. H. Russell, his attorneys, comes and defends, &c., when, &c., and says that the said Philip Greely, junior, deceased, in his lifetime never promised, and the said defendant never promised, in manner and form as the plaintiffs allege against the said defendant; and of this he puts himself upon the country; and the said defendant craves leave of the court to file the following further plea in this behalf; and such leave being granted, for further plea in this behalf, the said defendant says that said plaintiffs ought not to have or maintain their aforesaid action against him, because he says the said plaintiffs, before and at the time of the commencement of this suit, to wit, on the thirty-first day of March, in the year of our Lord eighteen hundred and fifty-three, at Boston aforesaid, were indebted to the said Philip Greely, junior, in his lifetime, and still are indebted to the defendant as said administrator of the estate of said Greely, deceased, in a large sum of money, to wit, the sum of forty thousand dollars, for the work and labor, care, diligence, and attendance of the said Greely in his lifetime, by said Greely and his servants before that time done, performed, and bestowed in and about the business of the said plaintiffs, and for the said plaintiffs, and at their request; and for divers materials and for other necessary things by said Greely be-

fore that time found and provided, used and applied in and about the said work, and labor for said plaintiffs, and at their like request; and for divers goods, wares, and merchandizes sold and delivered by said Greely to said plaintiffs at their like request; and for money by the said Greely before that time lent and advanced and paid, laid out and expended for said plaintiffs, and at their like request; and for money before that time had and received to and for the use of said Greely; and for money due and owing from said plaintiffs to said Greely in his lifetime and to said defendant for interest upon and for the forbearance of divers large sums of money due and owing from the said plaintiffs to said Greely in his lifetime, and said defendant since his decease, and by said Greely in his lifetime, and said defendant since his decease, forborne to said plaintiffs for divers long spaces of time before then elapsed.

And the defendant further says that at the time aforesaid, at Boston aforesaid, the plaintiffs were indebted to said Greely in his lifetime, and still are indebted to the defendant as administrator as aforesaid, in the sum of forty-seven thousand four hundred and ninety-three dollars and ninety-five cents, according to the account hereto annexed, which said sums of money so due and owing to said defendant as aforesaid exceed the damages sustained by said plaintiffs by reason of the non-performance by the said Greely in his lifetime, or of the said defendant, of the said several supposed promises and undertakings in the plaintiffs' declaration mentioned, and out of which said sums of money so due and owing from the said plaintiffs to said defendant, the said defendant is ready and willing and hereby offers to set off and allow to the said plaintiffs the full amount of said damages according to the law in such case made and provided, and the said defendant is ready to verify; wherefore he prays judgment if said plaintiffs ought to have or maintain their said action against him.

By his attorneys: C. T. & T. H. RUSSELL.

DR.—The United States in account current with Philip Greely, jr., late collector and disbursing agent of the treasury at the port of Boston and Charlestown, and also as superintendent of light-houses and the marine hospital, under official bond dated Octo. 1st, 1850.

To balance of my account rendered as collector and disbursing agent	$12,326	09
To amount of my special account of commissions charged as superintendent of light-houses, and rendered.....	17,648	92
To proportion of the additional or penal duties collected under the 8th sect. of the act of July 30, 1846, and the 17th sect. of the act of August 30th, 1842, due and payable to the collector, naval officer, and surveyor, as per abstract now rendered	8,892	40

To amt. paid to Hosea Ilsley, as measurer of the customs, for fees earned by him from June 1st, 1849, to Dec. 31st, 1852, as per voucher now rendered.....	8,026 54
To amt. paid to clerks in the custom-house, as compensation for services in making up my accounts after I left office, as per vouchers and abstracts now rendered	600 00
	$47,493 95

And now, in reply to the defendant's plea first pleaded, wherein he puts himself upon the country, the plaintiffs do the like.

By their attorney: B. F. HALLETT.

And as to the defendant's second plea above pleaded, the plaintiffs reply and say that they ought not to be precluded from having and maintaining their aforesaid action thereof against the said defendant, by reason of anything by him in his said second plea alleged, because they say that they were not indebted to the said Philip Greely, jr., in his lifetime, and are not indebted to the said defendant as administrator of the estate of the said Philip Greely, junior, in manner and form as the said defendant hath in his second and last plea above alleged, and this they, the said plaintiffs, also pray may be inquired of by the country.

By their attorney: B. F. HALLETT.

And the dft. doth the like.

By his attorneys: C. T. & T. H. RUSSELL.

And now said defendant comes and informs this honorable court that since the commencement of this suit the estate of said Philip Greely, junior, deceased, has been represented as insolvent, under and in accordance with the laws of said Massachusetts in such case made and provided; and that commissioners have been appointed by the honorable the judge of probate for the county of Suffolk, in said State, to examine all claims against said estate as by statute in such case provided. Wherefore the defendant prays the court in case any claim shall be finally sustained in this suit, that no judgment may be rendered thereon, but only such proceedings had as by law in such case are provided.

By his attorneys: C. T. & T. H. RUSSELL.

And from said May term, A. D. 1856, this case was continued from term to term until the May term, A. D. 1857, when, issue having been joined as aforesaid, the same, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and say that the said Philip Greely, jr., did promise in his lifetime in manner and form as in the plaintiffs' declaration is alleged,

and assess damages in the sum of thirty-seven thousand five hundred and eighty-one dollars forty cents.

Upon the trial of the above-entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the defendant filed his bill of exceptions, which being found conformable to the truth, was allowed by the court, and is in the words and figures following, to wit:

Be it remembered that at a term of the circuit court of the United States, holden at Boston, within and for the district of Massachusetts, on the fifteenth day of May, eighteen hundred and fifty-seven, by the honorable Benjamin R. Curtis, circuit judge, and the honorable Peleg Sprague, district judge, came the United States of America, and by an action of assumpsit declared against James C. Converse, of Boston, in said district, as he is administrator of the goods and estate of Philip Greely, junior, late of said Boston, deceased, and late collector of customs at said Boston, in said district, as by the writ and declaration of record will appear; to which the defendant pleaded the general issue, and filed certain claims in set-off, as by said set-off of record will appear; and the plaintiffs joined in said issue, and thereupon said cause came on for trial before the said circuit court at said May term, before a jury empannelled for that purpose, and the said defendant then and there claimed to be allowed, among other things, in set-off against the plaintiffs' claim, the sum of seventeen thousand six hundred and eighty-four dollars and ninety-two cents, ($17,684 92,) as commissions due him from the plaintiffs upon certain contracts, purchases, and disbursements made by him for oil and other articles for the light-house service of the United States, under direction of the Secretary of the Treasury.

At the trial it appeared by the transcript from the Treasury Department of the plaintiffs, introduced by them in evidence, that said claims had been duly and properly presented by the defendant's intestate, Mr. Greely, at the Treasury Department, for credit and allowance, and had there been disallowed, and no objection was made by the plaintiffs to the defendant's right to recover of the plaintiffs upon this ground.

It also appeared that the defendant's intestate, as collector, had, during each year he was collector, received the compensation of six thousand dollars, and also the sum of four hundred dollars allowed by law.

No question was made as to the amount of commissions claimed. The plaintiffs, in their transcripts, admit that the sum of $17,684 92 is two and a half per cent. commission upon the defendant's disbursements for light-house purposes during his term of office, and no objection was made that that is not the proper commission, if the defendant is entitled to any.

It was further admitted that the defendant was, from May 1st, 1849, to April 1st, 1853, superintendent of lights and disbursing agent for the district of Boston.

The duties of this office, it was offered to prove, were the charge and superintendence of all light-houses between Eastham and Plum island, Newburyport, including the making of all necessary disbursements for the payment of the keepers' salaries, wages of men, repairs, and the necessary supplies, in the same manner as other superintendents and disbursing agents in their respective districts.

The defendant then offered to prove the following facts in regard to these disbursements upon which the aforesaid commission was claimed.

The Secretary of the Treasury, or the proper officer under him, during the whole term of the defendant's office, was accustomed from time to time to send specific orders to him to advertise for proposals, make contracts for and purchase all the oil, lamps, wicks, and supplies of every kind required for the whole light-house service of the United States, as well that of the sea-coasts as the lakes and rivers.

Agreeably to such orders or requests, the defendant did, from time to time, make all these contracts and purchases, draw the necessary contracts, and all payments and disbursements thereunder and therefor, take charge of the property when purchased, and distributed the same in such quantities and to such points all over the United States as were required or directed by the Treasury Department. These services involved much time, labor, and responsibility on the part of the defendant, and were performed at the request and upon the order of the Treasury Department. The defendant paid out no moneys which have not been allowed.

And it was upon all disbursements thus made that he claimed the aforesaid two and a half per cent. commissions, amounting to $17,684 92.

The plaintiffs objected to this evidence, because they said, admitting all that was thus proposed to be proved, it gave the defendant no claim whatever to the commissions claimed.

The court, thereupon, after consideration, ruled and decided that, admitting all that the defendant thus offered to prove to be true and as alleged, yet the defendant had no rightful claim against the plaintiffs to the said commissions, or any part thereof, and could not recover the same in set-off, but that the defendant, being the collector of customs, and as such having received the aforesaid compensation of $6,000 and of $400 each year, could not recover any sum whatever for the commissions claimed as aforesaid; and the court thereupon refused to admit the evidence offered, and instructed the jury, in accordance with said ruling and for the reasons therein stated, that the defendant could not recover for said commission.

To which ruling, decision, and instruction the defendant then and there excepted; and thereupon the jury returned a verdict for the plaintiffs, in the words and figures following, to wit:

"The jury find that the said Philip Greely, jr., did promise, in his lifetime in manner and form as in the plaintiffs' declaration is al-

leged, and assess damages in the sum of thirty-seven thousand five hundred and eighty-one dollars forty cents.

"W. G. CUTTER, *Foreman.*"

And inasmuch as the matters referred to and the said ruling, decision, and instructions of the honorable court so objected to do not appear by the record of the verdict aforesaid, the counsel, on the part of said defendant, prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved or given in evidence, and the rejections, rulings, and directions of his honor, the judge, thereupon, and the exceptions thereto. All which being found to be true, are allowed.

In witness whereof, I have hereunto set my hand and seal.

P. SPRAGUE, [SEAL.]
Judge U. S. Mass. dist.

This cause was thence continued to the present term, when, the honorable Ashur Ware, district judge, presiding, (he having been specially designated and appointed under the acts of Congress passed July the twenty-ninth, eighteen hundred and fifty, and April the second, eighteen hundred and fifty-two,) it was considered by the court that the said United States of America, plaintiffs, do recover against the said James C. Converse, administrator as aforesaid, the sum of thirty-seven thousand five hundred and eighty-one dollars and forty-cents damages, and against the said James C. Converse their costs of suit, taxed at ninety-eight dollars and sixty-one cents.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of the United States of America versus James C. Converse, administrator, in said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Boston, in said district, [L. S.] this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of these United States the eighty-second.

H. W. FULLER, *Clerk.*

UNITED STATES, *ss:*

The President of the United States to the judges of the circuit [SEAL.] court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering

of judgment in a suit before you, or some of you, between the United States of America, plaintiffs, and James C. Converse, administrator of the goods and estate of Philip Greeley, jr., late collector of the customs at the port of Boston and Charlestown, in said district, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said James C. Converse, administrator, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government; that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

H. W. FULLER, *Clerk.*

Allowed by ASHUR WARE,
Judge of the U. S., and for the time being judge of the said circuit court:

(Being specially designated therefor from the Maine district, pursuant to the acts of Congress in such case made and provided.)

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE U. S.,
Massachusetts district, ss:

I, Henry W. Fuller, clerk of the circuit court of the U. S. Massachusetts district, do now make return of this writ of error, and annex hereto and transmit herewith a true copy of the record and of all proceedings in the case of the United States against James C. Converse, administrator of the goods and estate of Philip Greeley, junior, deceased, wherein judgment was rendered in said circuit court. I also return herewith the citation issued on the granting of this writ of error.

In testimony whereof, I have hereunto set my hand and the seal of said circuit court, this second day of December, A. D. 1857.
[SEAL.]

H. W. FULLER, *Clerk.*

[Endorsed:] Writ of error. James C. Converse, adm'r, plaintiff in error, vs. the United States.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district, ss:

Oct. 27, 1857.

I certify that a copy of this writ has this day been left in the clerk's office for the adverse party.

Attest: H. W. FULLER, *Clerk.*

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE U. S.,
Massachusetts district, ss:

To the United States of America, greeting:

You are hereby cited and admonished to be and appear before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at ten o'clock a. m., at Washington, being the present seat of the national government, then and there to make answer to a writ of error this day issued by the clerk of the circuit court of the United States, Massachusetts district, wherein James C. Converse, administrator of the goods and estate of Philip Greely, jr., late collector of the customs at the port of Charlestown and Boston, is plaintiff in error, and you are defendants, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of October, A. D. one thousand eight hundred and fifty-seven.

ASHUR WARE,
Judge of the U. S., and for the time being judge of said circuit court:

(Having been designated therefor from the Maine district, according to the law in such case made and provided.)

UNITED STATES OF AMERICA,
Mass. Dist., ss:

BOSTON, *November* 2, 1857.

Pursuant hereunto I have notified the United States of America, by leaving at the last and usual place of abode of C. L. Woodbury, the attorney of the United States, a true and attested copy hereof.

WATSON FREEMAN,
U. S. Marshal.

Service and t.....	$2 06
Copy	1 00
	$3 06